

## Information in State statutes and regulations relevant to the National Background Check Program: Maryland

This document describes what was included as of January 2011 in Maryland statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Maryland has eight relevant statutes and regulations, all of which were used in gathering information for this document, and which are listed below in the State Statutes and Regulations section.

<b>Key Feature</b>	<b>Description</b>
Specific facility and provider types	The State covers six of the long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), namely: skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, adult day care providers, and residential care providers.
Registry checks	Not addressed.
Fingerprinting	Applicants for employment with one of the six listed facility or provider types have the option of applying for a State criminal history record check, which includes fingerprinting, or requesting a private agency to conduct a background check, which does not include fingerprinting.
Rap back	Not addressed.
Provisional employment	Not addressed.
Definition of direct patient access employee	Maryland defines a direct patient access employee as an individual working for compensation at an adult dependent care program (LTC facility) who has routine direct access to patients and who is not licensed or certified. Maryland defines "direct care staff" as an individual who is directly involved in the day-to-day education, training, habilitation, assistance, counseling, care, or attention of an individual with a developmental disability.
Provision of criminal background check results to employee	The State provides the results of the background check at no cost to the employee.
Expiration of criminal history background check results	Not addressed.

Key Feature	Description
<p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> <li>1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1))</li> <li>2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2))</li> <li>3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3))</li> <li>4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4))</li> </ol>	<ol style="list-style-type: none"> <li>1. Not addressed.</li> <li>2. Not addressed.</li> <li>3. Not addressed.</li> <li>4. Not addressed.</li> </ol>
<p>State-identified convictions</p>	<p>Maryland statutes and regulations identify four types of disqualifying convictions. These include abuse, neglect, mistreatment of residents, and any felony or any crime involving theft. Felonies and crimes involving moral turpitude are only noted in the regulations as disqualifying for personal care attendants participating in Maryland’s waiver program.</p>
<p>Opportunity to contest accuracy of background check findings</p>	<p>The State provides a way to contest the accuracy of background check findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>Not addressed.</p>
<p>Rehabilitation/mitigation process for negative fitness determinations</p>	<p>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

## State Statutes and Regulations

Citation	Description
Annotated Code of Maryland, Health-General Article, §§ 19-1901 through 19-1912	These are about the criminal history checks and fingerprinting, as well as background checks performed through a private agency, required for non-licensed, paid employees who have routine, direct access to dependent adults served by home health agencies, hospices, assisted living program facilities, adult day care facilities, and "related facilities." (Section 19-1908 includes procedures for employees of adult dependent care programs to use to contest a finding of criminal conviction.)
Annotated Code of Maryland, Health-General Article, § 19-4B-03(c)	This indicates that nursing referral service agencies must have State-level criminal record checks done for all licensed health professionals and "care providers" (i.e., nurse aides). Affected individuals must have the opportunity to contest the findings.
Annotated Code of Maryland, Criminal Procedure Article, §§ 10-225 and 10-227	These include procedures for contesting and appealing contents of State criminal history records.
Annotated Code of Maryland, Criminal Law Article, §§ 10-101 through 10-109	This is about expungement.
Code of Maryland Regulations (COMAR) 12.15.03	This is about criminal history record checks for individuals working for adult dependent care programs.
COMAR 10.07.14.19.B.3	This regulation indicates that assisted living facilities must obtain a criminal background check on any job applicant within 30 days prior to hiring, and may not employ a person with a criminal history "that indicates behavior that is potentially harmful to residents."
COMAR 10.07.07.08.B.1(a)	This regulation indicates that nursing referral service agencies must implement policies and procedures to screen licensed or certified health professionals and care providers. The screening must include a State criminal history record check or a private agency background check.
COMAR 10.03.09.B.5(d)	This regulation indicates that, prior to a nursing staff agency's initial referral of a licensed practical nurse, registered nurse, or certified nursing assistant to a client health care facility, the agency must obtain a criminal background check on the individual "if the client facility requires criminal background checks for facility employees."

### Key

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